

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DEREK JOSEY,

Plaintiff,

9:21-cv-617 (BKS/ATB)

v.

CORRECTIONAL OFFICER
DUSTIN BELL, et al.,

Defendants.

Appearances:

For Plaintiff:

Aaron M. Goldsmith
Law Office of Aaron M. Goldsmith, PC
225 Broadway - Suite 715
New York, NY 10007

For Defendants:

Letitia James
Attorney General of the State of New York
Anthony Huntley
Assistant Attorney General, of Counsel
The Capitol
Albany, New York 12224

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Derek Josey commenced this action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Clinton Correctional Facility. (Dkt. No. 1). On January 27, 2023, Defendants Bell and Tucker filed a motion for summary judgment under Fed. R. Civ. P. 56(a) seeking to dismiss the complaint in its entirety. (Dkt. No. 38). Plaintiff filed a response on

May 5, 2023. (Dkt. Nos. 47-49). No reply was filed. This matter was assigned to United States Magistrate Judge Andrew T. Baxter who, on July 26, 2023, issued a Report-Recommendation recommending that Defendants' motion for summary judgment be denied and that the case be referred back to him for a conference with the parties regarding the status of this litigation. (Dkt. No. 51). Magistrate Judge Baxter advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 51, at 11).

Neither party filed objections to the Report-Recommendation. As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation, (Dkt. No. 51), is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' Motion for Summary Judgment, (Dkt. No. 38), is **DENIED**; and it is further

ORDERED that the case is referred back to Magistrate Judge Baxter to confer with the parties regarding the status of this litigation; and it is further

ORDERED that an evidentiary exhaustion hearing will be scheduled by the Court in due course; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 16, 2023
Syracuse, New York

A handwritten signature in black ink, reading "Brenda K. Sannes". The signature is written in a cursive style with a horizontal line underneath the name.

Brenda K. Sannes
Chief U.S. District Judge